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Hon. Klint Kesto
Judiciary Committee Chair
Michigan House of Representatives
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Melissa Weipert
Judiciary Committee Clerk
Michigan House of Representatives
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Dear Chairman Kesto and Ms. Weipert:

I am writing to offer comments about SB 92, now before the Judiciary Committee, which amends MCL 28.601 *et seq.* and affects the authority of the Michigan Commission on Law Enforcement Standards (MCOLES), the state agency that licenses police officers.

I support the bill because it would be a marginal improvement over the current state of affairs. But in my view, the bill does not go far enough. I hope you can consider amendments. If the bill becomes law, I hope you will consider amending the law in the future. Significant changes are needed in the way Michigan regulates the police profession.

1. CIVILIAN CONTROL

Section 3 describes the membership of the commission. Although the bill appears to balance management and labor representation within the police sector, it ignores the civilian sector. Police regulation is not a kind of labor negotiation. The public has a stake in the regulation of police, employers and employees are not the only stakeholders.

Article 5, Section 5, of the Michigan Constitution requires that professional boards have a majority of professional members. It does not say "supermajority." It does not say

"100% controlled by members of the profession." The police profession is one of the most sensitive professions in a democratic society – police officers have a monopoly on the use of violence and the power to deprive citizens of their freedom. The public has a larger stake in effective, safe policing than it has in almost any other profession. Civilians should have something like 49% representation on MCOLES.

Studies show that most police misconduct is caused by a relatively few officers. We need a system that detects and weeds out those individuals from the profession. Corruption and misconduct in the police force are a major source of embarrassment and cost for cities and counties. Elected civilian officials should have seats on MCOLES. Municipal insurers should have seats on MCOLES. Insurers pay damage awards in cases of police misconduct and set premiums on government liability policies which burden local government. Elected civilian officials and the insurance industry have an incentive to detect and weed out the relatively few individuals responsible for the bulk of misconduct claims.

Both government and non-governmental organizations represent people who have encounters with the police – youth, minority communities, people who live in highly-policed neighborhoods. Organizations that represent those demographic groups and fight for their rights should have seats on MCOLES.

Academicians should have seats on MCOLES. They can provide access to scientific analysis and national resources.

Please consider amending Section 3 to create more civilian representation.

2. DISCIPLINE SYSTEM

Sections 9 (3), 9 (4), 9 (5), and 9 (8) contemplate that most decisions to grant or take away licenses will be made at the local level. The commission's job is merely to make sure that the paper trail is complete. In matters of licensing, MCOLES is not much more than a rubber stamp. Michigan has a set of experienced agencies that regulate professions. Professional regulatory boards do not need to be rubber stamps. They can do much more helpful, active work.

Conflicts of interest. When decisions are made at the local level, conflicts of interest abound.

There is nothing in current law or in SB 92 that provides an effective management tool for conflicts of interest when hearings are conducted at the local level. There is no mechanism that insures that investigators and decision makers at the local level will be independent or impartial.

Truel v Dearborn. A 2010 opinion from the Court of Appeals contains facts that illustrate the conflicts of interest that can interfere with justice when police misconduct is adjudicated at the local level:

Christopher Truel worked for the Dearborn, Michigan, police department. In 2004 he responded to a call about a fight in a bar. When he got to the bar he saw a person lying on the floor covered in blood. He also saw the Dearborn police chief and other Dearborn police officers. He was told that the police chief had been involved in the fight and had been wielding a pool cue. The police chief told Mr. Truel that if he knew what was good for him he would end the investigation and get the f___ out of there. Mr. Truel stopped investigating and left.

The bar fight attracted media attention and comment from the city council. The county prosecutor and state police conducted an investigation which ultimately exonerated the police chief. During the investigation Mr. Truel was called as a witness, and he agreed to testify.

After Truel testified he was harassed and ridiculed by his fellow officers. A week after he testified, Truel found himself under investigation for misconduct, and he was taken off duty. The city of Dearborn also tried to subpoena the statements that other Dearborn police officers had testified during the investigation.

Truel v Dearborn, 291 Mich App 125; 804 NW2d 744 (Michigan Court of Appeals, 2010).

Registry. Section 9 (8) contemplates that local agencies report to the commission when they suspend, demote or terminate police officers. But the bill does not describe what the commission is to do with that information. When those events happen, or when an officer is allowed to resign in lieu of termination, the commission should be required to conduct an investigation and make a decision on the officer's license.

A police officer demoted, fired for cause, or allowed to resign in lieu of termination should be investigated by MCOLES and not allowed to work for another department until the investigation is resolved.

One of the major problems in police regulation is the ability of police officers with records of misconduct to move from one department to another.

The legislation should create a registry, such as exists in several professions. Police officers who have clouds on their licenses should not be hired anywhere in the state until the issue clouding their license has been resolved by the commission.

Eaton County Case. A case from Eaton County illustrates how police officers can avoid accountability by moving from jurisdiction to jurisdiction. A deputy sheriff in Eaton County, Michigan, was involved in an abusive confrontation that led to discipline. He was ordered to wear his body camera during traffic stops in the future. Later, in June 2014, the deputy stopped a car with a defective tail light. During the stop he turned off his body camera. The driver of the car happened to have a video recorder, and he recorded the encounter.

During the encounter, the driver asked for the deputy's name and badge number, and the deputy responded by dragging the driver out of the car, forcing him to the ground, and arresting him. The deputy wrote a report that misrepresented the encounter; he portrayed the driver as being contumacious.

The driver filed a complaint with the sheriff's department and provided a copy of the video. Another officer in the sheriff's department apparently suppressed the video so that it was not provided to the investigators until sometime later, when it surfaced.

When the video surfaced, the deputy was allowed to resign in lieu of being fired, and the officer who suppressed the video was reprimanded. The deputy later got a job in a sheriff's department in a nearby county.

Todd Heywood, "Traffic Stop Gone Bad: Eaton County Deputy Resigns to Avoid Disciplinary Hearing," (Lansing City Pulse, April 20, 2016), <http://lansingcitypulse.com/article-13044-Traffic-stop-gone-bad.html>

Rehabilitation. Section 9 (12) is too draconian. It requires the commission to revoke an officer's license under certain circumstances. It gives the board no discretion to take actions short of revocation. MCOLES should have the flexibility to reprimand an officer, to suspend a license, or to place an officer on probation. Revocation should not be the only option. Professional discipline should not be an all-or-nothing affair. Harsh treatment invites gamesmanship, and it robs the police force of officers who might be rehabilitated. Officers who get in trouble need a path back into good standing with the profession.

Standards of Conduct. Section 9 (12) gives a list of offenses for which licenses must be revoked, but most offenses (except fraud against the licensing process) are criminal convictions. The list should include offenses that are not crimes and that the commission itself adjudicates. For example, an officer should face consequences for

- Negligence
- Incompetence
- Making a false report
- Destroying or diverting evidence

Disrespecting the rights of others
Retaliation against a person who has filed a complaint

These or similar offenses should be added to the list. These offenses should be investigated and adjudicated by the commission, not at the local level.

MCOLES needs the staffing and the budget to conduct its own hearings and adjudicate complaints based on its own standards of conduct. Michigan has other agencies with budgets and staffing to conduct their own investigations and hearings. Those regulatory activities are funded by license fees. MCOLES should be funded through a system of license fees as other professional boards are.

Retribution. SB 92 contains no protections against retribution. People who file complaints against police officers or against standards and practices in local police departments are sometimes exposed to retribution. This includes both civilians and police officers who file complaints. Confidentiality during the investigation phase is crucial -- especially when a police officer is complaining against her own department or when a civilian is alleging sexual abuse -- when fear of retribution may deter complainants from coming forward. Studies show that sex abuse is one of the major forms of police misconduct. Incidents of sex abuse are vastly underreported because victims fear retribution.

Expanding the discipline mechanism at the state level will make the system more fair, objective, and effective.

Please consider amending SB 92 along these lines, or consider amending the law along these lines at a future date.

I would like an opportunity to meet with you in person on this issue.

Sincerely,

Erick Williams